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The Right Honourable *Henry Earl of Bindon* (Son and Heir apparent of the Right Honourable *Henry Earl of Suffolk*) The Honourable *Edward Howard* and *Charles Howard* Esqs; (two other Sons of the said Earl of *Suffolk*) *John Pitt* Esq; and the Lady *Diana* his Wife, Daughter of the said Earl, Appellants.

The Right Honourable *Henry Earl of Suffolk*, the Right Honourable *Ann Countess Dowager of Suffolk*, (surviving Executors of *James late Earl of Suffolk* Deceased) *Sir William Ruffel Bart.* *Thomas Marriott Esq;* *Sufannah Coppinger Spinster*, (Executrix of *Mary Coppinger Widow*, deceased, who was Administratrix of *Ralph Coppinger* deceased) *John Davies* and *Margaret his Wife*, Respondents.

The Appellants C A S E.

October 19. 1669.
Conveyance from *James Earl of Suffolk*, to his late Majesty, for 50000 l. of *Audley-end-House*, &c.
30000 l. satisfy'd.
March 21. 1669.
Privy Seal for the remaining 20000 l.

The 20000 l. not paid in *Earl James's* Life time, became doubtful whether it would ever be paid.

July 10. 1688.
Earl James's Will, on which the present Doubt arises.

Earl George died before the 20000 l. could be divided, being neither paid nor secured.

November 21. 1701.
Audley-end-House, &c. granted to Trustees in satisfaction of the 20000 l.

Respondents Demands provided for, if valid, else not.

Trust divided among the then Five surviving Devises.

Administration to *Earl George*, granted to the Respondent *Coppinger* first, and after to the Respondent *Margaret Davies*.

Appellant, the *Earl of Bindon*, purchases in the other Shares.

Exhibited his Bill, to have the Benefit of the Trust.

June 17. 1707.
Decree that the Appellant should have a Conveyance, paying to the Respondent *Davies* a sixth part of the 20000 l. and Interest.

And for non-payment, the Bill to be dismissed.

Appeal against that Part, which allows the Respondents one 6th part of the 20000 l. with Interest, and Orders a Dismissal for non payment.

JAMES late Earl of *Suffolk* being seized in Fee of *Audley-end House*, Park, and Lands thereunto belonging in the County of *Essex*, by Deed and Fine (in consideration of 50000 l. agreed to be paid to the said Earl for the Purchase thereof) did Convey the said House, Park, Lands and Premises, unto his late Majesty King *Charles the Second*, his Heirs and Successors. That the said King *Charles* did satisfy to the said *James Earl of Suffolk* the Summ of 30000 l. in part of payment of the said 50000 l. and by Letters of Privy Seal for Satisfaction of the remaining 20000 l. did direct, that (out of such Moneys as were then remaining, or should thenceforth be paid into the Receipt of the Exchequer out of the Revenue arising by Fire-Hearths) there should be paid to the said *Earl James* or his Assignees, the said 20000 l. but no provision was made for Interest, till payment. That the said 20000 l. or any part thereof was not paid in the Life time of the said *Earl James*, who lived till the year 1688. and during his Life made all possible Application for the same, even to the time of his Death; so that the said *Earl James* looked upon the said 20000 l. in danger of being lost: And soon after his Death the Hearth-money (which was the only Security the said *Earl* had for the Payment of the said Summ, being taken away by Act of Parliament, and no other Provision being made for the Payment of the said 20000 l. the said Debt was look'd upon as Desperate.

Earl James made his Will, and reciting therein, that the said 20000 l. was then due to him, Devised the same in the words following, (*viz.*) *I do hereby give and devise the said 20000 l. unto my Brothers, George Howard, and Henry Howard, and unto Henry Howard, Edward Howard, Charles Howard, and Diana Howard, Sons and Daughter of my said Brother Henry Howard, equally to be Divided amongst them, Share and Share alike, and if either of them Dye, to the Survivors or Survivor of them, and soon after dy'd, and made the Defendants Henry now Earl of Suffolk, Anne Countess of Suffolk, (the Testator's Wife) and Richard Newman Gent. Deceased, Executors of his said Will.*

After his Death, *Earl George* survived him three years, but dy'd before any part of the said 20000 l. was paid, or any security or promise was given for the same, or the least Expectancy thereof, although great Application had been made to the Crown by him, and the Executors of *Earl James* for that purpose.

His late Majesty King *William*, in full satisfaction of the said 20000 l. and of 600 l. due to the *Earl of Suffolk* for Arrears of his Salary, (as Housekeeper of *Audley End*) and in consideration of the said *Earl's* quitting the Salary, (which was 250 l. per Annum) for the future, Granted to *Peter King Esq;* and *Thomas Marriott Gent.* and their Heirs, (and which Estate is now in *Sir William Ruffel* and *Thomas Marriott*) the said *Audley-End House*, Park and Lands thereto belonging, to hold to them and their Heirs, upon the Trusts following, (*viz.*)

In the first place, for the indemnifying the surviving Executors of *Earl James*, against all Claims and Demands of the Administrators of *Earl George*, in respect of the said 20000 l. and for making satisfaction to them, in Case they should appear to have Right to any part thereof.

Then as to one 5th, (the whole in five equal parts to be divided) of the said Premises in trust for the Respondent, the *Earl of Suffolk* and his Heirs.

As to one other 5th, in trust for the Appellant, the *Earl of Bindon* and his Heirs.

As to one other 5th, in trust for the Appellant, *Edward Howard* and his Heirs.

As to one other 5th, in trust for the Appellant, *Charles Howard* and his Heirs.

As to the remaining 5th, in trust for Lady *Diana*, (Wife of the Appellant *Mr. Pitt*) and her Heirs for ever.

That *Earl George* being (as is pretended) indebted to one *Ralph Coppinger*, by Judgment, in 876 l. *Coppinger* dy'd intestate, and Administration was granted to *Mary* his Widow; and also Administration to the said *Earl George* was granted, to *Margaret* the Wife of the Respondent *John Davies*, who under colour thereof, claims a sixth Part of the 20000 l. as the Share belonging to the said *Earl George*.

That the Appellant, the *Earl of Bindon*, (without any other Prospect of Advantage, then to preserve the said House for the Honour of his Family) with Advice of Council, purchas'd the several Shares and Interests of the other Appellants; and the now *Earl of Suffolk*, in the said Premises granted as aforesaid, and Exhibited his Bill in Chancery, to have Conveyances executed to him of the said Premises, free from all Incumbrances; And that the Appellant, the *Earl of Bindon*, and his Estate might be quieted from the pretended Claims of the Representatives of *Earl George*, and all Claiming under them.

To which Bill the Respondents having Answer'd, the said Cause came to be heard, before the Right Honourable the Lord Chancellor of Great Britain, who was pleased to Decree a sixth Part of the 20000 l. and Interest for the same, from the time the *Earl of Bindon* had Possession of the Premises, under the Grant of the late King *William*; and upon the Appellants paying the same, unto the Respondents, *Davies* and his Wife, the Appellant was to have a Conveyance of the Premises.

But in default of Payment, then the said Appellant's Bill should stand dismissed with Costs.

From which Decree, so far as it relates to the allowing of the Respondents, *Davies* and his Wife's Title, to a sixth Part of the said 20000 l. and the ordering Interest of the said sixth Part to be paid, and the ordering of the Appellants Bill to be dismissed in default of Payment thereof, the Appellants have Appealed, apprehending the said Decree to be erroneous, the Intent of the Will of the said *James Earl of Suffolk* being, That the said Devises, or such of them who should be living when the said 20000 l. should come to be paid, should share the same equally amongst them; and that *Earl George* happening to dye, before any Payment, or Provision for Payment, of Principal or Interest, the Respondents, *Davies* and his Wife, as his Representative, cannot be entitled to any Part or Share thereof.

- I. For that the Words of the Devise (and if either of them dye, to the Survivors or Survivor of them) containing no Limitation of time, within which such dying to entitle the Survivors is to be, the time ought to be construed as largely as any reasonable Sense of those Words will bear, and therefore most reasonable and proper to be understood, to relate, to the dying of any the Legatees, before the Debt recovered or received.
- II. For that some survivorship is intended, as there likewise is an equal Division intended (there being express Words for both) and it seems but reasonable that both should refer to the same time, that is the time of Payment for the 20000 l. is then to be divided when it is paid, and so the Sense of the Testator will be this, So soon as this 20000 l. can be got, it shall be divided amongst my Brothers, &c. and the Survivors of them; Or amongst my Brothers, &c. or such of them as shall be then living.
- III. For that there is no other time to refer this survivorship to, except the time of the Testator's Death, and that cannot be, because it makes the Clause of survivorship useless, for of Course those that dyed before the Testator, would be excluded without this Clause; and its a natural Construction, that the Testator might reasonably design a Kindness to the Persons named, if they lived to receive it, which yet he would not (nor can it be supposed he should) give to a Representative, who (as now happens) might be a perfect Stranger, and without any Merit from the Testator.
- IV. And should the Clause of survivorship be understood, of a dying by any of the Legatees in the Life of the Testator, it would make the Will to provide for a Contingency, which must happen before it was a Will (which it only is from the Testator's Death) and that would be unreasonable and void.

Therefore the Appellants humbly hope, that so much of the said Decree as aforesaid shall be reversed, and that the Respondents *Sir William Ruffel* and *Marriot*, may be order'd to execute Conveyances of the Premises in question, unto the Appellant the *Earl of Bindon* and his Heirs, or as he shall appoint.

Samuel Dodd.